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THE UNIVERSITY OF ALBERTA
A STUDY OF SENTENCING PATTERNS

by



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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies for acceptance, a thesis entitled A Study of Sentencing Patterns submitted by Janet Lucas in partial fulfillment of the requirements for the degree of Master of Arts.

ABSTRACT

This thesis reviews the literature concerned with sentence disparity in the court system. Also presented is an examination of some of the assumptions involved in this area and in the research methodology.

The central issue to be examined is that of discrimination in the application of the criminal law. A popular charge against Western judicial systems laid by some political activists and journalists is that the criminal law is unfairly administered, that it suffers in application from class and ethnic bias, that, in short, justice as practiced is unjust.

When scholars have attempted to test this allegation, they have produced contradictory conclusions. Some have found no evidence of bias in criminal sentencing practice; others have. Some investigators interpret differential sentencing as legally required, hence "just," while others hold that certain differential sentencing regularities cannot be legitimized in the law.

The present work holds that existing research is not adequate to resolve this issue. It is not adequate, first, because the samples of offenders used in such studies have not been sufficiently homogeneous in regard to judicially relevant characteristics to allow an inference of discrimination or its absence in sentencing procedures. The samples have not been sufficiently homogeneous because research attention has been paid to "official crime category" or "offence charged." Such a categorizing device does not produce offenders homogeneous with respect

to legally relevant sentencing criteria.

Research on this issue has also been inadequate because it relied on legal records for information on sentencing procedures. These records, as shown, do not report those "low visibility" decisions, of indeterminate legal relevance, that affect the sentence imposed. In sum, all that affects a judge's decision in an instant case is not contained in the official documents from which evidence of injudicial bias is deduced.

The present study provides data that point to a possible distinction between the legally relevant and non-relevant characteristics of offenders. The data are limited in time and number of cases and are included as an exercise in demonstration of the difficulties of the easy inference of justice, or injustice, in sentencing. The results of this demonstration show that, for the crime, time, and jurisdiction selected, the legally relevant characteristics of offenders have the greatest influence upon sentencing decision. Most of the variance in sentence reported by this study appears legally justified. Although some exceptional possibilities are noted for future research, the present data reveal no statistically significant tendency toward the imposition of differential sentences on the basis of legally irrelevant criteria. In short, for the time, crime, and Alberta jurisdiction examined, justice seems to have been done.

This finding does not, however, constitute the major contribution of this investigation. It is recognized that our data do not permit of generalization to other kinds of offenders or other jurisdiction and times. This research does demonstrate that the methodology of previous studies of sentencing practice has been deficient and it points to the kind of emendation in method future studies must make if they are to test the charge of injustice in the administration of the criminal law.

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INTRODUCTION

Concern has been raised about the justice of differential sentencing practices and the justification of any such differences by the characteristics of individual cases. The existing literature generally suggests that disparity between sentences, for offenders similarly charged, cannot be totally justified in terms of judicially relevant variables. These studies point to those factors indicative of seemingly unjust disparities such as race, age and sex. However, most of the articles which deal with this problem fail to take into account in an adequate manner the effect of variables which may be judicially relevant. Further examination of this literature on sentencing practices, with respect to allegedly similar offense categories, provokes the question as to the homogeneity of legally relevant offender characteristics within offense category. Legally relevant offender characteristics such as prior record are not evident from the official crime category in itself. One of the issues at hand, then, is that of determining whether charge represents a sufficient degree of homogeneity of offenders with respect to legally relevant characteristics to allow for the meaningful collection of demographic variables for an attempted explanation of differential sentencing patterns. The existing literature has not considered the possibility that sentence disparity may be due to differences in legally relevant characteristics within offense category, such as previous record and the seriousness of the instant offense, rather than to differences in those characteristics which are not

judicially relevant, such as age, race and sex.

The present research is organized in terms of the following three questions:

1. Are previous studies adequate with regard to having as the basis of their analysis a group of offenders homogeneous with respect to legally relevant characteristics? If such legally relevant characteristics as prior record and the specific nature of the offense are not taken into account then the determination of differential sentencing is based upon the unexamined assumption that the charge, or the "offense-for-which-convicted," is an homogeneous category in terms of legally relevant offender characteristics. Thus any sentencing pattern differences which appear may be a result of those legally relevant factors which have not been considered rather than a result of other factors indicative of discrimination.

2. Does the available data allow for the control of those offender characteristics considered as legally relevant so that any additional effect of legally non-relevant variables may be determined?

3. What are the effects of both legally relevant and legally non-relevant characteristics of offenders, similarly charged, on the sentence?

The stages of investigation involve:

1. An examination and critique of the literature on sentencing patterns.

2. An examination of legal records, specifically Probation and Pre-sentence reports, to determine if such offender characteristics as might reasonably be relevant to differential sentence are available.

3. An examination of 84 offenders in Edmonton, all charged with Section 280(a) of the Criminal Code of Canada ("Theft-over-\$50"), with respect to differences in the sentences handed down by the court. This exercise should illuminate those factors which affect differential sentencing and it should also serve as a directive for future research. Possible relevant sentencing factors which should ideally be considered include:

A. Legally Relevant Characteristics

1. The nature and severity of the instant offense.
2. Previous convictions and severity of previous sentences.
3. The number of charges, including charges withdrawn by the Crown, reported in the accusation under present consideration.

B. Legally Non-Relevant Characteristics

1. Sex of the offender.
2. Age of the offender.
3. Ethnicity of the offender.
4. Education of the offender.
5. Employment status of the offender.
6. Family status of the offender (includes marital status, place of residence and so forth).
7. Socio-economic status of the offender--Public Assistance.

The group of offenders can be considered homogeneous with respect to legally relevant characteristics if, at minimum, factors A above

are available in the records and can be held constant. The availability of such factors permits further consideration of the impact of legally non-relevant characteristics, factors B, upon the sentence decision, since control for legally relevant characteristics is possible.

In the course of this investigation the problems involved in the use of an official crime category for research become evident. The use of an official crime category is discussed with respect to its relationship to the processes of judicial accommodation and the effect which crime category has on the sentence outcome. In conclusion, it is hoped that the factors involved in sentence disparity and the problems in researching this area are clarified.

CHAPTER ONE

A REVIEW OF THE LITERATURE

The United States' President's Commission of Law Enforcement and Administration of Justice (1967) demonstrated concern with variations in sentencing patterns and suggested reasons for the existence of such variations. The Commission suggested that the "problem of disparity arises from the imposition of unequal sentences for the same offense, or offenses of comparable seriousness, without any reasonable basis." The Commission also felt that "the existence of unjustified disparity has been amply demonstrated by many studies" (1967: 23). It is studies such as these with which this chapter concerns itself, and with the contention derived from them that disparity has been "amply demonstrated." The Commission pointed to the fact that "relevant differences in offenders" may have resulted in sentence variation. An attempt was made to outline those "relevant" differences as noted in the various studies. "Unequal sentences for the same offense may also have resulted from the fact that statutory definitions of crimes encompassed a fairly broad range of conduct having varying degrees of seriousness. [Also,] lack of uniformity may have reflected geographic factors such as differences in public apprehension of crime among communities in the same jurisdiction or institutional considerations, such as the need to offer more lenient sentences to defendants who furnish information or testimony for the prosecution" (1967: 23).

The concern with sentencing patterns in the judicial process seemed to rest on the distinction between two separate sets of factors: (1) those which were indicative of justifiable sentencing differences, and (2) those which were indicative of unjustifiable sentencing differences.

The contention that there were justifiable sentencing disparities called for the specification of the relevant legal factors involved which resulted in the disparities. The contention that there were unjustifiable sentence disparities called for the specification of those variables that were not legally relevant but that affected the sentence outcome. Sentencing disparities, according to the literature, were attributed to various factors including the characteristics of the instant offense, the demographic characteristics of the offender, the characteristics of the judicial process, and the individual attitude and personality of the judge. Selected studies dealing with these issues are reviewed below.

THE PROBLEM AS DEFINED AND HANDLED IN SELECTED STUDIES

McGuire and Holtzoff (1940) pointed to certain disparities in sentences handed down by different judges. For example, for the fiscal year ending June 30, 1935, the average sentence for one judge was 851 days and for another judge it was 40 days. For narcotic charges, the range of gaol sentences was from 3,468 days to 31 days (1940: 427). The authors felt that these differences could not be explained by differences in the individual cases nor by the different types of cases from district to district because of the range of the difference. No further

analysis was undertaken and it appeared that their explanation rested on differences in the attitudes and the personalities of the judges.

Emil Frankel (1940) presented an analysis of a series of newspaper articles which dealt with the sentences imposed by four judges on 4,029 adult males during the years 1932, 1935, and 1939. It was noted that there was an even distribution among the four judges with respect to single and multiple charges. Considerable differences appeared in the types of punishment imposed by the judges. For example, Judge A gave gaol terms in 31.2% of the cases which he tried, compared to 2.2% of the cases which Judge C handled. Similarly, Judge C used probation in 40.5% of his cases while Judge B used it in only 11.9% of his cases. Frankel concluded that "the use of the statistical method in comparing the sentence practices of the four judges would seem to be entirely valid only if a representative number of cases handled by each of the judges is considered and if the distribution as to the types of offenses for which they are tried and the severity of these offenses are practically identical. In that event one would be dealing with a constant factor against which the particular sentencing practices of the individual judge can be laid and measured" (1940: 453). Thus Frankel was criticizing sentencing studies such as McGuire's and Holtzoff's, pointing to the fallacy of not having held constant relevant sentencing factors such as seriousness of offense. Although not mentioned by Frankel, the importance of controlling for other relevant sentencing factors such as previous record was implied.

There was a scarcity of studies for the twenty-year period from 1940 to 1960. The studies in the sixties were methodologically more

adequate in that they attempted to deal with those factors which should be held constant. Studies which deal with the question of sentence disparity and variations in attempts to explain this disparity follow.

Hood (1962) tested the hypothesis that differences in sentencing were not so much related to variations in the characteristics of individual offenders as they were related to the magistrate's policies in different areas. The conclusion Hood reached was that imprisonment policies of the magistrate appeared to be related to the social characteristics of the area they served and that there were significant differences between areas. Hood made passing reference to the fact that men with similar offenses received different sentences, but he made no systematic attempt to deal with the personal characteristics of offenders as possible influencing factors. Hood failed to take into account the nature of the offense per se and the homogeneity of the category of "offense-for-which-convicted."

Jaffary (1963) dealt specifically with the Canadian scene giving an overall view as to the existing sentencing trends. Briefly, he stated that there was a trend in Canada to increase the discretion of the court in sentencing by increasing the power to substitute fine, probation, or suspended sentence for imprisonment. He noted that there was a wide variation in sentencing for reported similar offenses from province to province, a variation which he attributed to the availability of different facilities. For example:

Theft is one of the most common offences, having 8,159 convictions in 1955. The sentences for it show a wide variation by provinces. Nationally, suspended sentence is used in 16 per cent of the convictions for theft. Quebec suspends 11 per cent, Manitoba 34 per cent--more than three times the rate of Quebec. . . . Short jail

sentences for theft have a national average of 21 per cent. The Quebec rate is 36 per cent, Manitoba 11 per cent, or less than one-third the rate of Quebec (1963: 40).

Jaffary did not control for previous record and severity of instant offense. Thus he falsely assumed that offense category constituted an homogeneous body of offenders. Sentence disparity, as Jaffary saw it, was mainly due to lack of adequate correctional facilities to which to send offenders of varied background characteristics and to the added pressure on the judge who had much leeway in the use of his discretion.

Rose (1965) attempted to assess the uniformity of sentences imposed by benches of three magistrates, given a set of cases, during an annual five-day training course in 1962, 1963, and 1964. The sentences imposed were compared in terms of the relationship between variables concerning a rural-urban dichotomy, sex, and the amount of experience which the magistrates had, which varied from 29 years to less than one year. Rose stated that the figures showed there was no significant variation in sentences given by the various benches with regard to all three variables. Rose went on to argue that little is known about the situation that produces disparity in judgment and continued to speculate about the two elements involved. He suggested that they were: (1) the tradition of specific courts which depends on personalities and the local history (Hood, 1962: 77), and (2) the presence of ethical problems which arouse strongly held views.

Jaros and Mendelson (1967) posited the existence of a professional judicial role which was bound by certain relevant criteria where the decision of sentence was concerned. The data presented were from two one-week periods in 1966 of sentences imposed on all complete cases

by three judges of the Detroit Traffic Court. The information which was presented included age, sex, race, nature of the charge, disposition, behavior of the defendant (with regard to "respectfulness"), recidivism, and the sentence. The conclusion was that sentencing was governed by:

1. The severity of the offense charged.

2. The recidivism of the defendant.

Jaros and Mendelson controlled for legally relevant sentencing characteristics and found that it was in fact those relevant sentencing factors which influenced the sentence rather than those factors which were irrelevant legal factors and which might be indicative of discrimination. The severity of the charge was determined on the "basis of the average fine that had been imposed for convictions on given charges during the first quarter." That is, low severity charges drew a mean fine of less than \$15, moderate between \$15 and \$75, and high severity more than \$75. "Recidivism was measured by observing whether previous traffic offenses were cited by the judge or admitted by the defendant."

The criticism of this study might come from the manner in which the information available was used to create these two indices, severity and recidivism. Also of importance is the nature of the court under investigation. That is, traffic offenses are very common occurrences and not regarded as indicative of the "criminal nature" of the offender.

Green (1961) concluded that seemingly unequal treatment of offenders reflected differences in characteristics which were associated with different criminal behavior patterns rather than with individual offender characteristics. The data consisted of 1,437 convictions recorded in the docket of a non-jury prison court of the Philadelphia

Court of Quarter Sessions. Information obtained was from the court docket and included: sentence, number of bills of indictment, name of the judge, name of the prosecutor, name of the defendant, offense charged, indictments, plea, and the verdict; and from the police record which included: name, age, sex, race, address, and information concerning the arrest and the trial. Green consolidated these items into three factors. They were: legal factors, legally irrelevant factors, and factors in the criminal prosecution as influenced by the individual differences of the participating personnel such as the judges and the prosecutors. Green systematically dealt with the problem of homogeneity of offender characteristics within offense category when he considered "legally relevant" factors. His "legally relevant" criteria included: (1) the type of crime committed, (2) the number of indictments on present charge, (3) previous record, including number of previous convictions and arrests and severity of previous sentences, and the recency of last prior arrest, and (4) recommendations of auxiliary agencies. He concluded that there were specific legal criteria for sentencing and that they imposed a definite restraint on the sentence meted out by the judge. He examined such "legally irrelevant" biosocial variables as age, sex, race, and place of birth and found significant differences associated with the criminal behavior pattern which, in turn, were indicative of legally relevant factors. The primary factors which affected the severity of the disposition and sentencing disparity were the nature of the offense and the previous criminal record and not judicial prejudice, as is sometimes alleged. Severity of the sentence decreased in the order of imprisonment, probation, fine and suspended

sentence. Green criticized other attempts to deal with the sentencing process as simplistic interpretations based on fragmentary data (1961: 20). Although his conclusion was stated in rather absolute terms pointing to the fundamental importance of the legal character of the case, Green attempted to account for possible inconsistency in sentencing due to the effect of individual differences among the judges. He stated that these personal differences were most pronounced in cases of intermediate severity, declining as the cases became either of a more petty or a more serious nature (1961: 75). He focussed on the importance of the impression on the judge of the "criminal nature" of the offender (1961: 101). He did not hesitate to point out that even in these instances there was "no evidence of undue disparity." Green also noted that the effect of previous record upon the severity of the sentence varied with the seriousness of the offense, thus suggesting a tendency toward unity in the judge's impression of the offender. Green dealt with certain factors which might have resulted in a spurious relationship concerning the sentence and irrelevant characteristics of the individual offender, such as age, sex, and race by controlling the relevant legal characteristics of the individual cases. Homogeneity of the category "offense-for-which-convicted" was guaranteed in this study.

Nagel in The Legal Process From A Behavioral Perspective (1969: Chapter 8) dealt with disparities in sentencing related to characteristics of the offenders, the specific variables being economic class, sex, race, age, and education. Nagel was interested in examining disparities at all stages in the administration of the criminal procedure. His sample consisted of 11,258 cases obtained from a sample of 194 counties

in all of the 50 United States. The data actually were taken from a study conducted for the American Bar Association by Lee Silverstein. The individual cases within each county were selected randomly. In the particular section of Nagel's work with which this report is concerned, the full sample of cases was not used. Only assault and larceny cases were used in order to hold "crime charged" constant. His sample consisted of 846 felonious assault cases, 1,103 grand larceny cases, and 196 assault cases and 785 interstate larceny cases obtained from the Administrative Offices of the Federal Government. Assault and larceny were chosen as they represented the most frequently occurring crimes. Nagel excluded from his analysis all cases in which the defendant was simultaneously charged with more than one crime. This is the only control with regard to legally relevant offender characteristics related to the "offense-for-which-convicted" or crime category. Examples of some of Nagel's findings follow. His findings indicated that indigents were more likely to be found guilty and less likely to be granted probation.¹ According to Nagel, another variable of importance is the quality of legal representation assigned to indigents. Nagel's findings were such as to indicate that females were more likely than males to be found innocent and to receive probation or suspended sentences. Negroes were found to be less discriminated against than indigents although many Negroes were also indigent. The younger the defendant, the more likely he was to receive a lighter sentence but, at the same time, the less

¹In this instance Green (1961) found that when prior record and type of crime are held constant there was no sentencing disparity. Nagel attributed this contradiction in findings to the nature of Green's sample which was restricted to Philadelphia.

likely he was to have a prior record. Nagel also examined disparities between types of courts. Nagel stated that he did control for Green's "legally relevant" factors but he was not specific concerning how he controlled for these factors and in which cases. Nagel concluded that some of the disparities found were socially and legally justifiable in terms of the specific nature of the crime and previous prison record. He remarked that "nevertheless, most of the disparities. . . cannot be logically justified in terms of societal interest, especially when crime and prison record are held constant" (1969: 104). He suggested that disparities would probably be nonexistent if there were not opposed groups such as lower and upper class, poor and rich, white and black; and if these groups were not given differential treatment in society in the first place. Nagel did hold nature of the crime committed constant--only in the sense that he eliminated those cases with more than one charge, thus controlling the number of charges. He assumed that "offense-for-which-convicted" was a sufficiently homogeneous category and did not control for variations in the seriousness of the instant offense, the specific type of instant offense, whether or not there were charges that were dropped, or for the existence of a prior record.

Hogarth (1967) clearly outlined some of the major problems involved in sentencing research design. He outlined three elements which were involved in sentencing behavior: the information before the court, the mental processes involved in making use of that information, and the social setting in which the decisions were made. Hogarth suggested a research design which dealt with these three aspects. He made the point that the court must deal with abstract legal formulations, the

translation of which may prove problematic, and that the penal system offered the judge a very limited choice of somewhat imperfect alternatives. Thus differences in the sentences of offenders have no clear origin. Green (1961) stated that it is the information with respect to relevant legal factors which was of paramount importance to the decision made by the judge. In recent correspondence with Professor Hogarth, he pointed to the importance of being familiar with how the information is received and understood by the judges. It was to such an inquiry that he directed himself in Sentencing As A Human Process (1969). The result of this study was a model of judicial behavior. "The model which emerges is one which sees sentencing as a dynamic process in which the facts of the cases, the constraints arising out of the law, and the social system and other features of the external world are interpreted, assimilated, and made sense out of in ways compatible with the attitudes of the magistrate concerned. In the process of judgment, the objective external world is transformed into a subjective, definitional world. The results are sentencing decisions which are consistent with the magistrate's definition of the situation" (1969).

SUMMARY AND CONCLUSIONS

Green purports that there are two factors--previous record and severity of the instant offense--which determine the sentence outcome. Nagel contends that statistical control of previous record and limited control of the nature of the offense do not account totally for variations in sentence outcome. Hogarth's interpretation and method of investigation is concerned directly with the process of judgment and

the handling of information in the decision process. These studies and the others mentioned above are several attempts to "explain" the existence of variations in sentencing patterns. Some of these endeavours point to the nature of the judicial process and to the wide discretionary latitude allowed the judge; others to the influence of the judicial attitude and personality; and others focus on the characteristics of the individual offenders and the specific nature of the instant offense. Conclusions reached vary from those which suggest discrimination to those which suggest the existence of specific legal criteria which are followed by the judge. The purpose of this chapter, however, is not to reach any conclusions but, rather, to introduce the reader to the area of the study of sentencing patterns and the issues arising from the alleged unequal treatment of offenders who are charged with the same official crime category.

CHAPTER TWO

THE PROBLEM DEFINED

THE PROBLEM AREA

There is no doubt that the allegation of disparities between sentences handed out for seemingly similar offenses warrants the investigation of those characteristics of the offense, the offender, and the process of justice which affect the sentence. Admittedly, the task of delineating the relevant components is complex and perhaps these components are not totally accessible by conventional research methods. However, having recognized the existence of a complex problem area, the task is one of doing as adequate a job as possible. The body of literature reviewed in the previous chapter must be examined with regard to the adequacy with which the authors have handled the problem, and their conclusions must be viewed within the context of any inadequacy.

The major focus from which these studies are examined arises from consideration of the question: What factors are considered relevant criteria with regard to the sentence decision? If previous studies fail to take into account all of those characteristics deemed judicially relevant then their results can tell the reader nothing about the characteristics which affect sentence disparities. The next question which arises then is: How does a researcher make the distinction between judicially relevant and judicially non-relevant characteristics? The investigation into this distinction might well begin with consideration

of the aims of criminal sanction.² The major aims of criminal sanction are the protection of society and the prevention of further offenses both by the offender and others in society. Implementation of these aims appears to follow two main lines of orientation. There exist many variations and combinations of these two orientations. The classical principle of punishment calls for the matching of the crime committed with a sanction of appropriate severity which is established beforehand by specified legal principles. The other viewpoint regards not the offense but the offender and the sanction is completely tailored to the individual's potential for rehabilitation. The distinction between these two approaches is necessary in order to understand the criteria used for the sentencing of an offender. The classical approach results in consideration of the offense committed, most likely resulting in no evident disparity at the level of the sentence decision. The more treatment-oriented approach results in consideration of characteristics of the offender, especially psychological variables, and most likely would result in widespread disparity between sentences when the only basis of comparison is on "crime-for-which-convicted." An integrated approach to sentencing theoretically considers both the offense committed and the characteristics of the individual offender. The sentencing model, as conceptualized in this thesis, is taken from the work of Nigel Walker (1969). Walker presents a very thorough discussion of the aims of the judicial and penal system. The realistic approach to sentencing

²This discussion of the aims of punishment is simplified for the purpose at hand and is a synthesis of ideas taken from various sources. Further reference may be made to Walker (1969), Schafer (1969), Sutherland and Cressey (1955), and Vold (1958).

can be taken when it is accepted that sentencers operate in a state of ignorance. He points to the prestige and idealization connected with the treatment orientation and psychological diagnosis. He feels that in the majority of cases where offenders are not obviously mentally disturbed that too much is expected from social histories and it is unlikely that any positive directives as to sentencing can be obtained from them. He supports this rationale by stating that there is no evidence to suggest that it is possible at present to distinguish between differences in responsivity in offenders to different sentencing alternatives (1969: 192).

The essence of the argument. . . is that the sentencing situation is one in which the diagnostic approach is of little help and the strategic approach is the only practical one (1969: 109).

Sentencing from the strategic point of view is visualized as:

. . . the application of choices entailing different probabilities of reconviction to a group of individuals whose responsivity is assumed to be conditional and indistinguishable (1969: 108).

Consideration then is focussed away from individual characteristics and onto such considerations as, for example, whether or not there is a differential reconviction rate for those offenders whose sentence is either a fine or probation. The relevant component of Walker's model for this report, though, is not the reconviction rate for specific sentences and types of crimes, but rather the emphasis on the offense per se and not on the offender as an individual as in the treatment model.

For the purpose of this report, a distinction is made between legally relevant and legally non-relevant characteristics of offenders.

Legally relevant characteristics stem from the classical conception of punishment and Walker's strategic model. Both of these models and the legally relevant variables focus on the criminal act(s). Legally relevant characteristics are a result of violated legal norms, and pertain not only to the characteristics of the instant offense but also to previous convictions. Also considered as legally relevant are the distinctions made in the legislation with respect to certain circumstances which mitigate an offender's culpability. Thus an offender who is very young, mentally deficient, or insane cannot be held totally responsible for the offense committed. Special courts and legal processes are available for dealing with these exceptions.

Legally non-relevant characteristics consist of those factors which are not offense-oriented. They are specific to the actor and have no relationship to the criminal act, neither past nor present. They are those characteristics which tell us about the offender as an individual in society. These are for the most part not diagnostically oriented as the treatment model is not under consideration in this report. Rather, they are demographic variables which are not related to the commission of a criminal act in the sense that they are not legally defensible. If information is restricted to these factors, prediction of the sentence would be impossible as there is no knowledge of the crime committed and the statutory limits which apply to that particular crime. The assumption behind the distinction between legally relevant and legally non-relevant characteristics of offenders is that demographic variables such as age, race, and sex are not of vital concern within the frameworks of the classical and the strategic orientations to sentencing.

Disparity is justified from the classical and strategic approaches if differences between sentences are totally accounted for by the legally relevant characteristics. Disparity is not justified within these models if legally non-relevant characteristics have any effect. These are definitive statements and should be regarded as such.

The recommendation to the court by a social agency as to the disposition of an offender is not considered under either of the two categories of characteristics distinguished above. It would appear to be a combination of the above factors together with some diagnostic considerations.

CRITICISM OF TWO STUDIES

Studies concerned with sentencing practices then must delineate the differential effect of these two sets of offender characteristics--those which are legally relevant and those which are not legally relevant. The contention of this report is that this distinction is not clearly made in existing literature. Thus allegations as to discrimination, implied by sentence disparities, are not sufficiently demonstrated. Green's study (1961) attempts the most rigorous control of these two sets of characteristics. Some criticism is warranted. He compares the seriousness of different offenses with sentences, thus holding this aspect of the nature of the offense constant, but he does not attempt to do this within a single offense category. That is, he makes the assumption that a single offense category is homogeneous in terms of the legally relevant characteristics of the instant offense. He assumes, for example, that two offenders charged with robbery

committed crimes of equal severity and that the presiding judge does not distinguish between them in terms of severity. Green considers the number of bills of indictment and prior criminal record. Green's conclusion is that differences between sentences are due to differences in criminal behavior patterns, not to discriminatory practices. Due to the fact that he does not attempt to form an homogeneous basis of comparison within a single offense category, this conclusion must be viewed with some reservation. His study is the most impressive of all those reviewed.

Nagel (1969), whose conclusion differs from Green's in that he points to the existence of discrimination, also attempts control of legally relevant factors. His controls are not as rigorous as Green's. He takes previous record into consideration and limits his sample to those offenders charged with a single offense. He also does not investigate the composition of offense category with regard to legally relevant characteristics of the instant offense.

To summarize then:

1. A distinction is made between legally relevant and legally non-relevant characteristics of the offenders. This is a significant distinction which has implications with regard to the determination of those characteristics which affect the sentence decision and whether or not the resulting sentence disparities are legally justifiable.

2. The contention is made that those studies which have concerned themselves with the exploration of the area of sentence disparity have neither considered nor statistically dealt with the above distinction in an adequate manner.

FURTHER EXPLORATION

The following chapters of this report are for the most part exploratory in nature. An attempt is made to replicate those studies reviewed in Chapter One, keeping in mind the two points raised at the end of the previous section of this chapter. Unfortunately, the scope of the data on hand does not allow for a comprehensive investigation of the kind necessary to handle the criticism which has been made with regard to the existing body of literature. This exercise is illuminating in the sense that it ascertains whether official records permit the easy assumption of homogeneity of offenders regarding legally relevant characteristics. The methodology followed is one which allows for the control of relevant legal characteristics within an offense category, thus resulting in an homogeneous base for the population of offenders.³

This exercise also examines the effect of offender characteristics, both legally relevant and legally non-relevant, on the sentence as handed down by the judge within the group of offenders under consideration. Thus the sentence is considered as the dependent variable and the offender characteristics as the independent variables. The logical theoretical possibilities with respect to effect on the sentence are:

1. That the legally relevant characteristics, as previously defined, are directly related to the sentence outcome,
2. That the legally non-relevant characteristics of the offender, as previously defined, are directly related to the sentence outcome,

³These data are available from legal records but collection of data for the present study was not extensive enough.

3. That both legally relevant characteristics and legally non-relevant characteristics are jointly related to the sentence outcome.

More general problems connected with research in this area are dealt with in the concluding chapter.

CHAPTER THREE

METHOD OF DATA COLLECTION AND ANALYSIS

DATA SOURCE AND COLLECTION

The source of data for this particular study was the total population of offenders, charged and convicted of Section 280(a) of the Criminal Code of Canada (Theft-over-\$50), for whom Pre-sentence and/or Probation Reports were prepared during the six month period July 1969 through December 1969. Access to this information was granted by the Adult Probation Branch in Edmonton. It should be noted that there were a considerable number of cases which passed through the court for whom no pre-sentence investigation was required, who were sentenced to gaol, and who are, therefore, not recorded by the Adult Probation Branch. Estimation of the number of offenders charged with Section 280(a) and not included in the following analysis was difficult due to the different classifications of offense category by different agencies. The Edmonton Police Department have statistics but they are categorized in terms of the original charge which may have changed by the time an offender reached the court, and split up into shoplifting, auto theft, and so forth, rather than referring directly to the Section number in the Criminal Code. Access to the official police records was not granted.

The data sheet used to collect the information was almost identical to the original sheet used by the probation officers. The information recorded thereon was similar to the original document although

recorded in shorter form. That is, in all instances, remarks were direct quotations, but full sentences were not recorded and neither were repetitious remarks. Most of the information noted was purely demographic in nature, such as age, race, sex, amount of education, and so forth. Some more impressionistic items of information were also noted, such as the Probation Officer's assessment of the personality and home condition of the offender. In all, there were forty-five major items of information collected.

Eighty-five cases were examined. One of these was excluded from the group since it was the only case dismissed because the offender was standing trial for a different offense in a different court. Thus there was a total of 84 offenders. These 84 cases comprised a total of, at the most, 80 incidents due to the fact that in some incidents more than one offender was involved. The number of incidents could only be estimated since in 15 cases the report noted that there was a co-accused, but there was no means of tracing the co-accused in the files or on the court dockets and therefore no way of connecting the other individual involved with the same offense. Some of the pre-sentence reports were filled out in full while others were lacking information on certain items.

OPERATIONAL DEFINITIONS OF THE MAJOR VARIABLES

Organization of the information which was collected into the conceptual categories discussed in Chapter Two was warranted. These categories parallel those found in Green's study. The measurement procedures utilized for each of the major variables are presented below.

The Sentence: The Dependent Variable

The outcome of the sentence decision was the focus of all the studies presented in the review of the literature. It was assumed that determination of those variables which affected this outcome would shed some light on the alleged existence of discriminatory handling of offenders who were faced with similar charges. Measurement of this variable required categorization of the sentences handed down by the judge into three categories: probation, gaol, and combination sentences. Information for this variable was found under the item 'adjudication' on the data collection sheet. All those offenders sentenced to gaol only were placed in the gaol category; all those whose sentences resulted in probation only were placed in the probation category; and all those offenders whose sentence was probation and gaol, or probation and a fine, or probation, gaol and a fine were placed in the combination category. The combination sentences range anywhere from one year in gaol plus two years probation to one day in gaol and a fine. It was assumed that gaol, resulting in a severe curtailment of freedom, was the most serious outcome. Although this assumption was implicit, no attempt was made in this research to differentiate between the three categories on any basis other than a nominal one. This decision was made when confronted with the problem of determining the difference in seriousness between a short time in gaol as compared to a fine and three years probation or as opposed to certain combination sentences.

Legally Relevant Characteristics

Legally relevant characteristics of the offenders were those characteristics which differentiated the individual cases from one another in a judicially relevant manner in line with the discussion in the previous chapter. They were those characteristics which could legally justify possible differences in sentences even though the individual cases were all charged and convicted of the same offense. There were two general categories of information collected which were considered as legally relevant factors: the specific nature of the instant offense and the previous record of the offender. Items defining the nature of the instant offense were:

1. The specific type of offense as measured by the categories of auto theft, shoplifting, and other,
2. The existence of additional charges as measured by the categories yes and none,
3. The apparent use of alcohol as noted in the description of the offense and measured by yes and no.

Another legally relevant characteristic was the previous record of the offender. Possible qualitative aspects of this variable were the recency of previous conviction, the seriousness of the previous offense, and the severity of the sentence. Although these were several important dimensions of this particular legally relevant variable, in this study it was measured only by whether or not there was a previous record.

Control of the above factors resulted in an homogeneous group of offenders with respect to legally relevant characteristics and allowed

consideration of the effect on the dependent variable--the sentence--of legally non-relevant characteristics.

The Recommendation

The recommendation of the Probation Officer was also considered as mainly a legally relevant variable even though it took into account more "clinical" considerations with regard to the "best" sentence alternative for the individual offender.⁴ This item of information was measured by grouping the recommendations into one of three categories: suitable for probation, not suitable for probation, and no recommendation made. The suitable category included those cases which were eligible and suitable. The not suitable category included those cases which may have been regarded as suitable but which were recorded as not eligible, and also those cases definitely considered as not suitable. In some instances there was no recommendation made either due to the fact that the social history was completed after sentence or to the fact that the Probation Officer left the decision to the discretion of the court.

Legally Non-Relevant Characteristics

Legally non-relevant offender characteristics were those characteristics which if related in any way to the dependent variable, while controlling for all legally relevant characteristics, can be said to be

⁴In other words, this characteristic of the individual cases was a combination of legally relevant and legally non-relevant characteristics.

indicative of judicially unjustifiable differences in sentencing patterns. Those characteristics most often discussed in the literature and as measured in this study are:

1. Sex as measured by the categories male and female;
2. Age as measured by the categories: 16-19 years,
20-29 years,
30 and over;
3. Ethnicity as measured by the categories: Indian and Non-Indian. The category 'Indian' included all Metis and Full Blood Indians. This division appeared to be the most significant for the Edmonton Area.
4. Education as measured by the categories: Grade 9 and under,
Grade 10 +;
5. Employment status as measured by: Employed,
Active students,
Unemployed.

It was felt that students constituted a group in themselves.

6. Family status as measured by:

- a. Marital status categorized as: Single,
Married.

Other categories such as widowed, divorced, and so forth, were not included due to the small number of cases involved;

- b. Dependents as categorized by whether or not the offender had children;

7. Public Assistance: as measured by the categories: Yes,
No.

This item measured whether or not the offender, or the family with whom he resided, was in any way assisted financially by public welfare agencies (residence at the Single Men's Hostel included).

Data Analysis

The information collected was translated into codes which enabled the researcher to make use of IBM cards, thus facilitating the retrieval of summary statistics. Detailed notes on the coding procedure together with a copy of the coding sheet can be found in the appendices. Reliability of the coding procedure at the time was established by: (1) re-coding several cases twice at two different points in time, and (2) having a different coder code several cases already previously coded. Correspondence was evident in both incidences with small variations apparent in the more impressionistic items which were not used in the analysis.

The major purpose of the analysis was an attempted replication of previous studies and improvement upon the method used. The relationships which were investigated were those between the dependent variable and the legally relevant characteristics; and then the relationships between legally non-relevant characteristics and the dependent variable while controlling for the legally relevant characteristics. Examination of the first set of relationships determined the possibility of maintaining an homogeneous group of offenders with respect to judicially

relevant characteristics. The analysis was accomplished by presentation of cross tabulations of the appropriate variables. Chi-square (χ^2) was used as a test of independence between the attributes in the tables. In this use, Chi-square was a measure of the total discrepancy between observed values and the values expected, given independence of the attributes. Use of the Chi-square test was considered appropriate when not under 20 per cent of the expected frequencies were smaller than 5 or when any one expected frequency was not smaller than 1 (Cochrane, 1954). If this discrepancy was significant, given a probability equal to and greater than .05, then further consideration of the relationship in terms of percentage differences was carried out. A percentage difference equal to or greater than 20 per cent was considered significant (Green, 1961). The major limitation of this analysis was the small number of cases, which diminished even further with additional controls, necessitating caution with respect to the interpretation of some of the results.

CHAPTER FOUR

DATA DESCRIPTION: THE OFFENDERS AND THE SENTENCE

Consideration of the previously mentioned issues in the light of data collected on 84 offenders charged and convicted of "Theft-over-\$50" follows. The data presented is in line with the operational definitions discussed in Chapter Three.

THE SENTENCE

There are 59 offenders who received probation, 12 who received gaol sentences and 13 who received combination sentences. This constitutes 70.2%, 14.3% and 15.5% of the total group, respectively.

LEGALLY RELEVANT CHARACTERISTICS

The Instant Offense

As previously mentioned, those variables which define the instant offense are:

1. The specific type of offense,
2. Whether or not there are additional charges, and
3. Whether or not the use of alcohol was apparent.

Of the group, 29.8% had more than one charge laid against them; 38.1% of the cases were auto theft; and 29.8% of the offenders were recorded as having been under the influence of alcohol at the time of the offense. A more detailed analysis of these figures is warranted together with an

examination of any interrelations between these characteristics of the instant offense.

The breakdown into specific types of crimes is as follows: 38.1% auto theft, 16.5% shoplifting offenses, and 44.7% other. These other include theft from automobiles, individuals, and so on.

Table 1

Additional Charges By Type of Theft

Additional Charges	Type of Theft					
	Auto	%	Shop-lifting	%	Other	Total %
Yes	13	40.6	1	7.1	11 28.9	25 29.8
No	19	59.4	13	92.9	27 71.1	59 70.2
	32	100.0	14	100.0	38 100.0	84 100.0
$\chi^2 = 5.245;$						
d.f.=2;						
P > .05						

The observed value of Chi-square shows that there is no significant association between the type of theft and whether or not there are additional charges. However, further investigation of this table reveals a tendency for those charged with auto theft to have additional charges. Of those offenders charged with shoplifting, 33.5% more than those charged with auto theft have no additional charges. Similarly, 33.5% more of those charged with auto theft than those charged with shoplifting have additional charges. This last statement must be regarded with caution due to the small number of shoplifting cases on which the percentage is based.

Table 4

Sentence By Type Of Offense

Sentence	Type of Offense							
	Auto		Shop-lifting		Other		Total	
		%		%		%		%
Probation	22	68.8	10	71.4	27	71.1	59	70.2
Gaol	6	18.7	1	7.2	5	13.1	12	14.3
Combination	4	12.5	3	21.4	6	15.8	13	15.5
	32	100.0	14	100.0	38	100.0	84	100.0
$\chi^2 = 1.502; \quad d.f.=4; \quad P > .05$								

Table 5

Sentence By Additional Charges

Sentence	Additional Charges					
	Yes	%	No	%	Total	%
Probation	15	60.0	44	74.6	59	70.2
Gaol	6	24.0	6	10.2	12	14.3
Combination	4	16.0	9	15.2	13	15.5
	25	100.0	59	100.0	84	100.0
$\chi^2 = 2.898;$ d.f.=2; $P > .05$						

None of the above three tables show any significant association between the variables involved.

Table 6

Sentence By Involvement With Alcohol

Sentence	Involvement With Alcohol					
	Yes	%	No	%	Total	%
Probation	12	52.2	44	78.6	56	70.9
Gaol	6	26.1	4	7.1	10	12.7
Combination	5	21.7	8	14.3	13	16.4
	23	100.0	56	100.0	79	100.0
$\chi^2 = 6.775$; d.f.=2; P < .05						

Table 6 indicates that there is a relationship between the sentence outcome and whether or not the use of alcohol is apparent in the commission of the crime. A greater proportion (26.4% more) of offenders without "alcohol involvement" receive probationary sentences.

In summary then, those variables which are characteristic of the nature of the instant offense are not related to each other in any significant manner. They are again, the existence of additional charges, the specific type of offense, and the involvement with alcohol. None of the variables noted in Tables 4 and 5 are associated with the sentence outcome. It is interesting to note, then, that these legally relevant characteristics do not appear to affect the sentence decision of the judge in the case of this group of offenders. The trends in Tables 1 and 2 together with the relationship in Table 6 indicate the need for further investigation to clarify the relationship between these variables.

Previous Record

Approximately an even number of offenders have a previous record as do not have a previous record. There were seven offenders for whom

there was no information concerning the existence of a previous record; there were 38 who had a previous record and 39 who did not. When considering the extent of a previous record of an offender one might take into account whether or not an offender has spent time in gaol and the recency of the last conviction. The number of cases involved does not permit consideration of these two aspects of previous record. Consideration is restricted to whether or not the offender has a previous record.

Table 7

Sentence By Previous Record

Sentence	Previous Record					
	None	%	Yes	%	Total	%
Probation	36	92.3	17	44.7	53	68.8
Gaol	0	----	12	31.6	12	15.6
Combination	3	7.7	9	23.7	12	15.6
	39	100.0	38	100.0	77	100.0
$\chi^2 = 21.801;$ d.f.=2; $P < .05$						

The observed value of Chi-square indicates that there is a significant difference between the expected frequencies and the observed frequencies. That is, there is a relationship between previous record and the sentence outcome. The majority of offenders were given probation and there was no one who received a gaol sentence who did not have a previous record; 47.6% more of those offenders with no previous record than those offenders with a previous record are given a sentence of probation in this group of offenders. The observed value of Chi-square when additional charges and type of offense are independently compared with previous record indicate that there is no significant variation between the observed and the expected frequencies. It appears from this

analysis that none of those attributes indicative of the nature of the instant offense is related to the sentence outcome with the exception of the involvement with alcohol. Previous record is the most influential legally relevant variable with regard to the sentence decision of the judge.

Recommendation

As previously mentioned, this variable is a combination of relevant legal factors and irrelevant legal factors. It takes into account more "clinical" considerations with regard to the "best" sentence alternative for an individual. There is an obvious relationship between the recommendation made by the Probation Officer and the sentence decision of the judge as indicated by the observed value of Chi-square.

Table 8

Sentence By Recommendation

Sentence	Recommendation					
	Suitable	%	Not Suitable	%	No Recommendation	Total %
Probation	37	92.5	9	39.1	10	56 70.9
Gaol	0	----	10	43.5	1	11 13.9
Combination	3	7.5	4	17.4	5	12 15.2
	40	100.0	23	100.0	16	79 100.0
$\chi^2 = 31.088;$						
d.f.=4;						
P < .05						

Some 53.4% more offenders receiving a suitable recommendation than those receiving a not suitable recommendation are given probation in this particular group of offenders. And 23.4% more of the offenders receiving no recommendation as compared to a not suitable recommendation

receive probation. And 30.0% more of those receiving a suitable recommendation than those receiving no recommendation received a sentence of probation.

The interaction effects of recommendation and previous record--that is, the effect which previous record had on the Probation Officer's recommendation--should be discussed.

Table 9

Recommendation By Previous Record

Recommendation	Previous Record					
	Yes	%	None	%	Total	%
Suitable	9	25.7	28	75.7	37	51.4
Not suitable	17	48.6	5	13.5	22	30.6
No Recommendation	9	25.7	4	10.8	13	18.0
	35	100.0	37	100.0	72	100.0
$\chi^2 = 18.184;$ d.f.=2; $P < .05$						

The observed value of Chi-square indicates that there is a significant deviation of the observed frequencies from the expected frequencies to warrant examination of the relationship. The previous record has a definite effect on whether or not the Probation Officer regards the offender as a suitable candidate for probation. This is in part related to the eligibility of the offender for probation. Some 50% more offenders with no previous record compared to those with a previous record are regarded as suitable candidates for probation. And 35.1% more offenders with a previous record than those with no evidence of a record are regarded as unsuitable for probation. A breakdown of

the above table in terms of the sentence decision is necessary in order to fully understand the combined effects of these two important variables. Of those regarded as not suitable and yet with no previous record, three received probation and two a combination sentence. Non-suitability in these instances is based on the mobility of the offenders and the resulting difficulty of surveillance. The four with no recommendation and no previous record all received probation. Of those regarded as suitable for probation and who had a previous record, none received a gaol term, seven received probation and two combination sentences. In order to give more insight into characteristics of the offenders involved in a particular category, one case is summarized. Note certain aspects of this case which may account for variations between sentences for seemingly similar offenses.

One of the offenders in Table 9 who falls into the cell of suitable for probation and with a previous record who received a combination sentence received as a sentence one day in gaol and a \$50 fine. The offender was white, male, 32 years of age and resided with his wife and four children at the time of the offense. The particular offense committed was one of shoplifting. The offender had a long record but it was noted in the report that the last offense committed occurred seven years ago. He was under the influence of alcohol at the time of the offense and it was noted that he did not commit crimes unless he was under the influence of alcohol.

In this particular instance then, it seems that there are certain factors which override the existence of a prior record when a sentence decision

is made. In summary, then, both recommendation and previous record affect the sentence outcome. Previous record affects the recommendation and accounts for much of the variance in the relationship between recommendation and sentence outcome but not for all of this variance as evidenced by the above mentioned case history.

LEGALLY NON-RELEVANT CHARACTERISTICS

The relationship of legally non-relevant characteristics to the sentence outcome while taking into account legally relevant characteristics should give some insight into the justification of variations between sentences handed down for seemingly similar offenses. As discovered in the previous section the most important legally relevant characteristic to control for is the prior record of the offender. The partially legally relevant variable recommendation of the Probation Officer is also an important variable to consider. The legally non-relevant characteristics discussed are: sex, age, ethnicity, education, employment status, family status and the dependence of the offender on public assistance.

Sex

Of the 84 cases, only 11 are female. All of the females received probation. Of the males, 65.8% are given probation, 16.4% gaol and 17.8% combination sentences. Of the females, four have a previous record. It seems that previous record does not affect the sentence decision when the offender is female. Consideration of the type of offense committed by the females in this group may shed some light on

this observation. Half of all of the shoplifting cases are committed by women. That is, seven of the female offenders are arrested and charged with "Theft-over-\$50" due to shoplifting.

Of the total number of 11 females, five are noted as being placed directly on probation by the court without benefit of a Pre-sentence report, the social history being completed after the sentence was passed. Only three males, two of whom were also involved in shoplifting, are recorded as being placed on probation directly by the court. Only one of the females is regarded as not suitable for probation. Comparison of male and female shoplifting cases reveals differences in the sentences. All of the females, as previously noted, receive a sentence of probation whereas most of the males receive combination sentences. For example, one male received a sentence of 1 day in gaol, a \$50 fine, and 12 months probation.

The conclusion reached is that females have a different pattern of criminal behavior. They are more inclined to be arrested and charged due to acts of shoplifting rather than auto theft. It is also apparent that they are more likely to be given probation. Whether this is due to the fact that they are female--hence a different social status than males--or to the fact that their pattern of criminal activity is considered less severe and less threatening to society cannot be determined at this point.

Age

The majority of the offenders are young as noted below.

16-19 years	47	56.5%
20-29 years	23	27.7%
30 and over	13	15.7%

Table 10

Sentence By Age

Sentence	Age							
	16-19 years	%	20-29 years	%	30+ years	%	Total	%
Probation	36	76.6	13	56.5	9	69.2	58	69.9
Gaol	6	12.8	6	26.1	0	----	12	14.4
Combination	5	10.6	4	17.4	4	30.8	13	15.7
	47	100.0	23	100.0	13	100.0	83	100.0
$\chi^2 = 7.710$; d.f.=4; P > .05								

As shown in Table 10, there is no association between the age of the offender and the sentence decision of the judge in this group of offenders. Even though 20% more of the 16-19 age group as compared to the 20-29 age group receive probation sentences, this is not enough of a deviation of the observed from the expected values, as indicated by the observed value of Chi-square, to warrant consideration.

Table 11

Type of Offense By Age

Type of Offense	Age							
	16-19 years	%	20-29 years	%	30+ years	%	Total	%
Auto	24	51.1	8	34.8	0	----	32	38.5
Shoplifting	4	8.5	5	21.7	5	38.5	14	16.9
Other	19	40.4	10	43.5	8	61.5	37	44.6
	47	100.0	23	100.0	13	100.0	83	100.0
$\chi^2 = 13.895$; d.f.=4; P < .05								

It is interesting to examine the association between type of offense and the age of the offender even though neither one is related to sentence outcome. No one over 30 years of age is charged as a result of auto theft. Of the older group, 30% more are charged as a result of

shoplifting compared to the youngest group of offenders. The small cell frequencies indicate the need for caution in accepting these statements.

Ethnicity

Table 12

Sentence By Ethnicity

Sentence	Ethnicity					
	Non-Indian	%	Indian	%	Total	%
Probation	35	72.9	14	63.6	49	70.0
Gaol	5	10.4	5	22.7	10	14.3
Combination	8	16.7	3	13.6	11	15.7
	48	100.0	22	100.0	70	100.0
$\chi^2 = 1.874;$ d.f.=2; P > .05						

There is no significant association between the ethnicity of an offender and the sentence decision of the judge. However, examination of percentage differences indicate a trend in the table. A greater proportion of Non-Indians than Indians (9.3% more) receive probation and a greater proportion of Indians as compared to Non-Indians receive gaol terms (12.3% more). Although these differences are not statistically significant, they indicate a trend which warrants further examination, perhaps with different data at a different point in time, taking into account the previous record of the offenders and the recommendation of the Probation officer.

Ethnicity cross-tabulated with both previous record and recommendation of the Probation officer does not result in any significant discrepancies between expected and observed values. It is interesting to note that Indians are 28.2% more likely than Non-Indians to be involved in auto theft (Table 13), even though the observed value of

Chi-square only approaches statistical significance. This trend is strong enough to be noted and considered important.

Table 13

Type of Offense By Ethnicity

Type of Offense	Ethnicity					
	Non-Indian	%	Indian	%	Total	%
Auto	17	35.4	14	63.6	31	44.3
Shoplifting	10	20.8	1	4.5	11	15.7
Other	21	43.8	7	31.8	28	40.0
	48	100.0	22	100.0	70	100.0

$\chi^2 = 5.796$; d.f.=2; $P > .05$

Education

Table 14 presents the distribution of the offenders with respect to grade completed and the sentence outcome.

Table 14

Sentence By Grade Completed

Sentence	Grade Completed					
	Grade 9	%	Grade 10+	%	Total	%
Probation	27	64.3	29	74.4	56	69.1
Gaol	7	16.7	5	12.8	12	14.8
Combination	8	19.0	5	12.8	13	16.0
	42	100.0	39	100.0	81	100.0

$\chi^2 = .987$; d.f.=2; $P > .05$

Employment Status

Table 15 shows the breakdown of the offenders with regard to their employment status.

Table 15Sentence By Employment Status

Sentence	Employment Status			
	Employed %	Active Students %	Unem- ployed %	Total %
Probation	20 64.5	5 62.5	30 73.2	55 68.7
Gaol	3 9.7	2 25.0	7 17.1	12 15.0
Combination	8 25.8	1 12.5	4 9.7	13 16.3
	31 100.0	8 100.0	41 100.0	80 100.0
$\chi^2 = 4.354;$ d.f.=4; P > .05				

Family Status

Tables 16 and 17 indicate the marital status and whether or not offenders have dependents.

Table 16Sentence By Marital Status

Sentence	Marital Status			
	Single %	Married %	Total %	
Probation	40 66.7	10 76.9	50 68.5	
Gaol	11 18.3	0 ----	11 15.1	
Combination	9 15.0	3 23.1	12 16.4	
	60 100.0	13 100.0	73 100.0	
$\chi^2 = 2.971;$ d.f.=2; P > .05				

Table 17

Sentence By Children

Sentence	Children					
	Yes	%	No	%	Total	%
Probation	14	73.7	45	69.2	59	70.2
Gaol	1	5.3	11	16.9	12	14.3
Combination	4	21.0	9	13.8	13	15.5
	19	100.0	65	100.0	84	100.0

$\chi^2 = 1.934$; d.f.=2; $P > .05$

Socio-Economic Status--Public Assistance

This item measures whether or not the offender, or his family with whom he resides, is in any way assisted financially by public welfare agencies.

Table 18

Sentence By Public Assistance

Sentence	Public Assistance					
	Yes	%	No	%	Total	%
Probation	12	66.7	47	71.2	59	70.2
Gaol	4	22.2	8	12.1	12	14.3
Combination	2	11.1	11	16.7	13	15.5
	18	100.0	66	100.0	84	100.0

$\chi^2 = 1.333$; d.f.=2; P > .05

The relationships of the legally non-relevant characteristics to the sentence outcome, presented in Table 14 through Table 18, are not significant.

SUMMARY OF FINDINGS

With respect to this group of offenders, the most important legally relevant characteristic of the offender regarding the sentence decision of the judge is the prior record. Also, the recommendation of the Probation officer, which is a combination of legally relevant and legally non-relevant factors, significantly affects the sentence outcome. Also significant is the association between the apparent involvement with alcohol and the sentence. This may be partially explained by the trends indicated in Tables 1 and 2. The involvement with alcohol may be related to auto theft and auto theft, in turn, is likely to be related to the existence of additional charges. This possibility is partially negated by Tables 3 and 5 which indicate that there is no association between additional charges and the use of alcohol, nor between additional charges and the sentence outcome. Further investigation is needed in order to clarify the relationship between these variables. The most important findings that characterize this group in terms of the relationship of non-relevant legal characteristics to the judge's decision are:

1. Previous record is not related to the decision when the offender is female. All of the females in this group are given probation independent of the existence of a prior record. It may be that the criminal behavior of women is generally considered less serious by

society than that of men. For instance, they are more likely to commit crimes of shoplifting (Cameron, 1964) as substantiated by this analysis.

2. No other legally non-relevant characteristic of the offenders is associated with the sentence outcome. That is, the observed value of Chi-square indicates no significant relationship between the sentence outcome and the legally non-relevant characteristics of ethnicity, education, employment status, family status, and the dependence of the offender on public assistance.

3. Although not statistically significant, some trends are apparent which point the way to the need for further investigation. There appears to be a tendency for Indians to receive probation less often than Non-Indians. Also, there appears to be a tendency for the youngest age group to receive probation more often than the 20-29 age group. Both Indians and the age group 20-29 years are more likely to have previous records, though how much variation previous record accounts for cannot be determined.

4. Although not related to the issue of sentence disparity, it is interesting to note that Indians are more likely than Non-Indians to be involved in auto theft. Also, at this stage, those over 30 years of age are more likely to be involved in shoplifting as compared to the youngest age group. The youngest age group is more likely to be involved in theft of an automobile compared to the other age groups. These trends might indicate that different groups of offenders are involved in different patterns of criminal behavior. As previously mentioned, though, specific types of crime do not appear to be associated with the sentence outcome for the group of offenders under consideration.

The analysis in this chapter leads to the conclusion that the legally relevant characteristic of prior record is a leading factor in the judge's sentence decision, as is the recommendation of the Probation officer. Sentence variation can be explained in terms of these two variables across all other legally non-relevant characteristics of the offenders with the exception of sex.

HOMOGENEITY OF THE GROUP AND STUDIES OF SENTENCE DISPARITY

The present, small-scale study has shown that the comparison of sentences received by persons convicted of "a crime" does not permit the inference of the fairness or unfairness of the judicial decision. "Official crime categories" do not describe homogeneous bodies of offenders. Studies like Nagel's (1969) which assume homogeneity of offender from "crime for which convicted" are in error.

Further, such categories do not even describe homogeneous offenses. For example, the data presented in this chapter show all the offenders to have been charged with Section 280(a) of the Criminal Code. Yet of these, 38.1% were auto thefts, 16.5% were shoplifting offenses, and 44.7% were other kinds of offenses. Twenty-five of the 84 cases had additional charges and 59 had the single theft charge. Nagel purports to control for this heterogeneity by restricting his analysis to singularly charged individuals. This deals with only part of the heterogeneity of the group.

The contention, previously mentioned in Chapter Two, is that control regarding legally relevant characteristics of the offenders in

sentencing studies is generally inadequate. The important point is that the data presently available are of such a nature as to make it possible for an adequate investigation of sentencing patterns. Information is available which allows statistical control resulting in an homogeneous group of offenders with respect to legally relevant characteristics. Within the limitations of the data presented in this chapter, control for the most important variables regarding homogeneity of legally relevant offender characteristics within offense category is presented.

Contentions may be raised concerning the analysis in this chapter with respect to the adequacy of record-keeping processes and the ability of the researcher to account for low-visibility decisions as they affect the sentence decision.

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND OTHER CONSIDERATIONS

THE ISSUE AND FURTHER CONSIDERATIONS

Criticism of research of sentencing patterns, as presented in this report, arises from the contention that the comparison of offenders, similarly charged, is not on a sufficiently homogeneous basis. That is, the group of offenders must be equal, not only with respect to the charge laid, but also with respect to other legally relevant characteristics. Previous studies do not deal with a sufficiently homogeneous group of offenders with respect to these legally relevant characteristics to be able to make any statements about those factors involved in sentencing disparity. The data analysis presented in Chapter Four serves as a directive for future research in this area, resulting in a more homogeneous group of offenders with respect to legally relevant characteristics. All things being equal, then, it seems possible, using this method and the conceptual distinction between legally relevant and legally non-relevant factors, to determine those factors which account for sentence disparity. This is assuming that all other factors, apart from legally relevant and legally non-relevant factors dealt with in this report, are not only equal but are in fact knowable.

What these studies are in fact dealing with is the question, "What variables affect the judge's sentence decision?" The major focus

of sentencing research is on two sets of variables:

1. Judicially relevant characteristics, and
2. Offender characteristics which are not considered judicially relevant.

Information is readily available for these two sets of characteristics as they appear in socio-legal records. The social science researcher may, if given permission, have access to the court docket, the Police report, the Prosecutor's report, and the Pre-sentence report. It is unlikely that unlimited access is granted to either the Police or the Prosecutor's reports. The issue to which the following section directs itself is whether or not this information is sufficient in order to determine the factors involved in the sentencing decision. The major assumption is that the information which is accessible to social science researchers gives the total picture. Even if the findings arrived at are a result of strict statistical methods and adequate control for legally relevant factors, the conclusion reached may be distorted by other factors in the legal process which are not readily available to the researcher.

The main problem which arises is that of dealing with the use of official legal records and the information contained therein. Aspects of this problem are investigated and the implications which arise for studies of sentence disparity are noted. Examination of the problem includes:

1. General problems in the use of official statistics.
2. The low visibility of certain decisions which occur and which may not be written into the reports and thus are not evident to the researcher collecting data.

USE OF OFFICIAL STATISTICS

Kitsuse and Cicourel discuss the use of official statistics in social science research. They feel it is necessary to distinguish between "the social conduct which produces a unit of behavior and organizational activity which produces a unit in the rate of deviant behavior" (1963: 132). Thus two processes are distinguished:

1. The behavior producing processes, and
2. The rate producing processes.

Studies concerned with the sentence outcome and which make use of official records are not so much dealing with actual behavior but are dealing with categories and information which is produced by specific organizational activity. Merton (1957: Chapter 5) attributes the problem of the use of official statistics to the categorization of forms of deviant behavior. That is, the "same" forms of deviant behavior are found in different categories and "different" forms of behavior in the same categories. Merton also points to the problem that "successive layers of error intervene between the actual event and the recorded event, between the actual rates of deviant behavior and the records of deviant behavior" (1957: 31). Kitsuse and Cicourel do not agree that these problems inhibit social science research. They suggest that emphasis be shifted to the processes by which rates of deviant behavior are produced. "The theoretical conception which guides us is that rates of deviant behavior are produced by the actions taken by persons in the social system which define, classify and record certain behavior as deviant" (1963: 135). Records, then, reflect certain organizational contingencies. In the same vein, the American Bar Association (1955)

notes that there is considerable ambiguity in defining the nature of criminal conduct within the limits of the laws and that statistics are affected by accommodating processes such as plea bargaining. It is necessary to clearly outline processes of information collection to enable the researcher to fully understand the "true" nature of the information which he is using for his research. Kitsuse and Cicourel present a rather optimistic viewpoint in that they are pointing to the exceptional use of official statistics rather than to the most frequent use of them. That is, many researchers make use of official records without qualification--without reference to organizational contingencies. With regard to studies of sentence disparity it is evident that close attention must be paid to the problem as stated by Merton: "Different" forms of behavior in the "same" category and the "same" forms of behavior in "different" categories. Full investigation into the nature of the "official crime category" as it appears on the court docket and also into the nature of the other information collected by the various agencies involved in the processing of an offender is called for. Implications for research into sentencing patterns becomes evident. Data for research are most often taken from legal records and samples are most often based on official crime categories.

JUDICIAL AGENCIES AND LOW VISIBILITY DECISIONS

Research in sentence disparity examines closely the information with which the judge makes his decisions. It is this information with which studies such as those noted in previous chapters examine those factors which affect any variation between sentences. Information is

collected on each offender by the different agencies which take part in the court system. In each agency there may occur certain low visibility decisions. For the purpose of the following discussion, a low visibility decision is defined as a decision which directly affects judicial proceedings, which is not recorded, and hence not available to the researcher. Areas where low visibility decisions may occur are examined in the light of the previous analysis in Chapter Four. Much of the information is taken from contact with the various agencies which the author had in the process of data collection.

The Police

That there is discretion at the level of arrest and in the laying of the charge is well documented (Skolnick, 1966; Goldstein, 1963). Low visibility decisions do affect the recorded information at this level. For example, even at the level of arrest, "cooperation" itself can be used as a bargaining tool with regard to manipulation of the charge which is laid. The decision to charge an individual with 280(a) of the Criminal Code ("Theft-over-\$50") is considered as rather arbitrary as some of those offenders who steal an automobile can be and are charged with Section 281 of the Criminal Code ("Taking a vehicle without the owner's consent"). The problem as noted by Merton (1957), the same form of behavior being placed in different categories, becomes apparent.

The Prosecutor

It is the function of the prosecutor to present evidence against

the accused. The prosecutor compiles the necessary information from the Police report. Any prior record must be established either from fingerprints found at the scene of the crime and substantiated by Ottawa or by admittance in court by the offender that it is in fact his record. Donald Newman (1966) writes extensively on that stage of the legal process at which a decision is made as to the guilt or innocence of an offender. The main concern which Newman deals with in his book is the process of accommodation commonly termed "the negotiated plea" or "plea bargaining." Plea bargaining involves the exchange of a guilty plea for certain concessions on the part of the Prosecution. For example, the most common concessions are a reduction of charge to one of a less serious nature, and dismissal of other charges. The effect which this process of accommodation has on the sentence outcome is marked. A change in the offense category results in a change in the statutory limits on sentencing which the judge must apply. Also, the discretion of the prosecutor as to the amount of information which he relates to the judge will affect the type of information with which the judge makes his sentence decision.⁵ In research presented in Chapter Four, only the court docket and the Pre-sentence report were used. Information as to plea bargaining and the associated low visibility decisions of charge reduction or the dropping of charges is not evident in these documents.

The Judge

The judge makes the ultimate decision as to the sentence. As noted by Newman, ". . . judicial concurrence is in most cases routine,

⁵That is, charges which have been dropped may or may not be mentioned in court.

although sometimes the judge may be unaware of the pre-court negotiation relating to charge reduction or a sentence promise. . . . In other instances the recommendation may influence the judge or they the prosecution may withhold information which, if known, would result in a higher sentence than the promised one" (1966: 91). Also, if the judge is aware of the ongoing bargaining processes his sentence may be altered accordingly. The judge is the arbitrator in the adversary system and ideally remains an impartial and fully informed observer. That he is at all times a fully informed observer is not knowable as evidenced by the point made by Newman above. That he is impartial in each case is also not knowable from official court records. The judge's rationale for a particular sentence at a particular time may not be available to the researcher. For example, although imprisonment may be an exceptional sentence for an offender charged with breaking and entering who has no prior record, the judge may impose it because of an increase in this type of offense (Walker, 1969).

The Probation Officer And The Pre-sentence Report

The probation officer enters the case after a verdict of guilty in order to prepare a Pre-sentence report, if requested by the court. The appendices contains a copy of the information sheet which guides the probation officer in preparation of the report. The Pre-sentence report is a social history which contains some clinically oriented items such as the personality of the offender as well as more demographic information. Extensive interviews with several probation officers show the kinds of considerations they take into account when writing a report.

A common feeling of all of the interviewed officers is that the attitude of the presiding judge toward certain types of offenses is a major influence in the sentence decision and that the report must be written with this in mind. For example,

A young, white, male offender was charged with 280(b) ("Theft-under-\$50") as a result of an act of shoplifting. This offender had no previous record and was at the time attending university. The probation officer in charge of this particular report remarked that the offender would likely receive a fairly long period of probation. This was not due to the seriousness of the offense but rather to the attitude of the judge who felt that "offenders who had a good background and who were from a 'normal' home should know better."

This was apparently characteristic of the particular judge.

The Stages At Which Low Visibility Decisions Occur

In summary, then, the stages at which low visibility decisions occur are:

1. Arrest: The police have the discretion to decide whether or not to arrest and charge an offender (La Fave, 1965). The amount of evidence at hand may be an influencing factor as may be the demeanor of the offender. Discretion as to the type of charge laid occurs at this stage.

2. Prosecution: The prosecution has the discretion to manipulate the type and the number of charges prosecuted. Plea bargaining is the common form of manipulation. The prosecution also controls the

amount of evidence which is placed before the judge.

3. **Sentence Decision:** The judge may use his discretion to control illegal police procedures (Newman, 1966). He may also feel that there are mitigating circumstances in an individual case or that crime trends or public opinion warrant a change in the severity of the sentence. His personal attitudes toward a particular crime or offender may influence his decision. All of these decisions may result in sentence variation which cannot be accounted for by the legally relevant characteristics previously defined.

4. **The Pre-sentence Report:** The information contained in this report may depend on the presiding judge if the probation officer is aware of the judge's particular focus of concern. Those characteristics of the offender contained in the report may be differentially examined by different judges. The personal attitudes of the officer writing the report will affect the result. The backgrounds of the probation officers vary from those with university degrees to those with work experience as police officers and as such emphasis on certain characteristics are most likely different.

IMPLICATIONS FOR RESEARCH USING LEGAL RECORDS

Two factors emerge from the previous discussion with which the researcher must concern himself if he is looking for total information about what occurs when processing an offender through the court system. The first is that decisions of low visibility occur which may alter the charge laid, the charge prosecuted, and the sentence outcome. Secondly, the rationale for the decisions made by personnel involved in the court

system is not always evident from court records. This latter point pertains directly to the sentence decision of the judge. Data collected for studies which attempt to account for those factors involved in variations between sentences, for seemingly similar offenses, are taken mainly from official court records. The extent to which the two factors outlined above contribute to variations between sentences is in need of exploration. In other words, studies on sentence patterns are conducted on only part of the relevant information. A major research question which must be answered in connection with determination of just exactly what constitutes relevant information for studies of variations between sentences is: Are processes of accommodation evident from the official court records and if they are not is it possible to determine the degree to which these unknown decisions affect the recorded information? Some questions are posed which relate directly to the type of information used in the previous chapter. Answers to these may influence the use of information in such investigations.⁶

1. Does the charge(s) laid and the charge(s) for which an offender is convicted correspond in any way with the police description of the criminal act as it occurred?
2. Is the charge(s) reduced and, if so, is this noted on the records and are the reasons stated?
3. Is the judge aware of any processes of accommodation which transpired before the trial?

⁶If the judge does not have the same information concerning the education of each offender before him, then studies of sentence disparity which use amount of education as a basis of comparison are in error. This example can be extended to other attributes as well.

4. Does the judge have complete information on the individual cases before him and is the type of information consistent for each case?

To my knowledge there has been no systematic attempt to assess the effect of these points on legal research and the use of official legal records. These questions are not exhaustive of the questions which might be asked and it may well be that the answer to the original research problem concerning the origins of sentence variations is not forthcoming due to the complexity of the process involved. The major and concluding question must be whether or not the use of official records for research is valid in spite of the above questions and the doubts these questions raise concerning the accuracy of official records?

SUMMARY AND CONCLUSIONS

Concern with the justification of sentence disparity leads to consideration of those characteristics of the offense and the offender which might possibly influence the sentence decision. The contention of this thesis is that previous investigations into the influence of these characteristics on the sentence outcome do not adequately separate those characteristics which can be expected, from a judicial standpoint, to affect the sentence and those which are not expected to be judicially relevant. Comparison of offenders on the basis of instant offense with respect to the sentence they receive is not on a sufficiently homogeneous basis with respect to legally relevant characteristics of the offenders to warrant any conclusions regarding the origin of sentence disparity. In other words, sentence variation may be due to legally relevant

characteristics of the offender such as prior record, and psecific nature of the instant offense. Characteristics such as these must remain constant within the group of offenders similarly charged. The charge category in itself is not a sufficient indicator of homogeneity. It is only within an homogeneous group of offenders that sentences can be compared on the basis of other offender characteristics such as sex and ethnicity. The purpose of this thesis is not only to point to this inadequacy of the methodology in the existing literature, but it is also the purpose to continue investigation into those factors which affect the sentence decision in line with the conceptual and empirical distinction between legally relevant and legally non-relevant characteristics of the offenders whose sentences are being compared. The results of this investigation indicate that the legally relevant characteristic of prior record of the offender is most influential on the judge's decision. The recommendation of the Probation officer also appears as an important factor. Only the legally non-relevant characteristic of sex appears to have an effect which overrides the effect of the previous record on the sentence decision. The limited group of offenders on which this analysis is based prevents any generalizations concerning the general population of offenders which pass through the court system. The issues raised in the opening sections of this chapter should at least be acknowledged by a researcher making use of official court records. It is felt by the author that the necessity of accounting for low-visibility decisions and personal rationale for individual decisions does not totally inhibit the kind of research presented in the thesis. Controlling for all possible legally relevant characteristics results in a fairly

homogeneous group of offenders with respect to these characteristics. Further homogeneity could be obtained if knowledge of the extent of the information placed before the judge is known (with regard to charges not prosecuted, and so forth). A possible addition to this type of analysis might be a tape recording of all that is said during the trial together with the written information contained in the Prosecutor's report and the Pre-sentence report. Ultimately, the determination of those factors which affect the sentence decision of the judge will not only enable conclusions as to the justification of differential sentencing but will also necessarily define more accurately the way in which our system of justice operates.

In conclusion, then, many of the difficulties involved in the study of sentencing practices have been illuminated. It is hoped that this particular exercise in exposure serves as a point of departure for future studies of sentencing patterns.

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APPENDIX 1

CODING AND FREQUENCIES

N=84

<u>Column</u>		<u>Frequency</u>
1 - 3	Case number	
4 - 5	Sample number 01	
6	Additional charges:	1. Combined theft charges 17
		2. Other (HWA, LCA) 8
		0. None 59
7	Involvement with Alcohol:	1. Yes 23
		2. No 56
		0. 5
8	Type of theft over:	1. Auto 32
		2. Shoplifting 14
		3. Other 38
9	Spent time in gaol:	1. Yes 15
		2. No 61
		0 8
10	Previous convictions:	1. None found, none admitted 39
		2. One 15
		3. Two 9
		4. Three or more 14
		0. 7
11	Recency of last conviction:	1. 1969 15
		2. 1968 11
		3. Prior to 1968 8
12	Represented by counsel:	1. Yes 23
		2. No 37
		0. 24
13	Plea:	1. Guilty 29
		2. Not guilty 1
		0. 54
15	Place of Birth:	1. Canada-Alberta 60
		2. Canada-Other 16
		3. Foreign 3
		0. 5
16	Age:	1. 16-17 27
		2. 18-19 20
		3. 20-21 9
		4. 22-29 14
		5. 30 + 13
		0. 1
17	Ethnicity:	1. English 29
		2. French 6
		3. Metis 10
		4. Indian 12
		5. Other (Slavic, Italian) 13
		0. 14

<u>Column</u>		<u>Frequency</u>
18	Religion:	1. Protestant 32
		2. Catholic 38
		3. Other 3
		0. 11
	Attendance:	1. Regular 11
19		2. Occasional/Seldom 32
		3. Never 28
		0. 13
	Grade Completed:	1. Grade 7 and under 9
20		2. Grade 8 20
		3. Grade 9 13
		4. Grade 10 13
		5. Grade 11 19
		6. Grade 12 5
		7. Post secondary 2
		0. 3
	Impression of Probation Officer:	1. Favorable 28
21		2. Unfavorable 23
		0. 33
	Trade:	1. Clerical and Sales 8
22		2. Skilled workers 7
		3. Unskilled, laborers 27
		4. Students 21
		5. Other (Farmer, Truck Driver) 6
		0. 15
	Previous employment:	1. Part-time 36
23		2. Full time 30
		3. None 13
		0. 5
	Present Employment:	1. Part-time 7
24		2. Full time 23
		3. Unemployed 49
		0. 5
	Marital status at present:	1. Single 60
25		2. Married 13
		3. Divorced, separated, widowed 5
		4. Common-law 6
	Number of children:	1. One 5
26		2. Two 3
		3. Three or more 11
		0 65

ColumnFrequency

31	Residence:	1. At home with immediate family	51
		2. Boarding, rooms, or apartment	12
		3. No fixed address	12
		4. Other (with friends, at work)	7
		0.	2
39	Father's occupation:	1. Managerial, clerical, sales	14
		2. Skilled	13
		3. Unskilled, laborer	6
		4. Retired	10
		5. Service	18
		6. Other (farmer, trapper)	3
41	Future plans:	0.	20
		1. Definite plans	54
		2. None or indefinite	22
42	Recommendation:	0.	8
		1. Suitable (eligible) for probation	40
		2. Not suitable (special cases included)	23
		3. No recommendation (placed directly)	16
43	Adjudication:	0.	5
		1. Probation	59
		2. Gaol	12
44	Length of probation: (includes combination)	3. Combination	13
		1. 6-12 mos.	40
		2. 13-19 mos.	20
		3. 20+ months	9
46	Sex:	0.	15
		Male	73
47	Subject subsidized by public assistance:	Female	11
		1. Yes	18
48	Length of gaol term adjudicated: (includes combination)	0.	66
		1. One day-9 mos.	14
		2. 10 months +	9

CODING NOTES

Columns 9, 10 and 11: Charges and convictions noted are those accrued as an adult. In some cases, convictions and juvenile records are noted by the probation officer. For example, case 050 has not been convicted but has spent time in Bowden and Spy Hill for anti-social behavior. Column 9 was coded yes. Also with regard to Column 9: If an offender spent time in gaol as the result of an inability to pay a fine, this was not considered the same as being convicted and sentenced to gaol. Column 9 accounts for those previously sentenced to gaol and who spent time there.

Column 8: The category "other" generally refers to theft to personal belongings, theft from auto, and so forth.

Column 21: The subjective judgment of the coder was necessary to interpret the impression. Those which seemed contradictory, ambivalent, or neutral were coded 0. Examples of favorable are: cooperative, likeable, good attitude, respect for authority. Examples of unfavorable impression are: uncooperative, manipulative, unreliable, irresponsible.

Column 22: Some subjects indicate that they have a trade when in fact the employment pattern and age indicate that the skill may not really be as stated. For example, subject 036 was coded as skilled as he reported his trade as baker. Yet he was very young and had never had a full time job.

With reference to Columns 23 and 24: The difference between part time and full time work in many cases was vague and classification was arbitrary. Combination of the two classes 1 and 2 was called for.

In the actual analysis these two columns were recoded taking into account students.

Column 31: Subjects living at the Single Men's Hostel were coded as having no fixed address.

Column 39: Skilled includes: repair man, painter. Service includes: teacher, fireman, commissionaire, postal, trucking and maintenance men.

Column 42: Those eligible but not suitable were coded as 2 (not suitable).

Column 47: Unemployment insurance was not included as full information was not available as to whether the subject was drawing at present. Men living in the Single Men's Hostel are included (3 in number).

Column 48: There were five subjects who received a token 1 day in gaol usually accompanied by a fine and/or probation.

Due to the somewhat subjective and complex nature of the data, there were some aspects of the social history or the nature of the crime which were lost through coding. For example, subject 071 was noted to be severely emotionally disturbed. Subject 078 was fined \$75 only. One case of charge reduction was noted (subject 026). Subject 046 appealed and received 18 months probation--this is not evident in the coding. For two of the cases, only very sparse social histories were available.

APPENDIX 2

FORMATE FOR THE PROBATION OFFICER'S REPORT

DEPARTMENT OF THE ATTORNEY GENERAL
ADULT PROBATION SECTION

DOCKET NUMBER:

Custody or Bail:

Date of Request:

Place of Trial:

Remanded to:

Justice or Magistrate:

Defense Counsel:

Probation Officer:

PROBATION REPORT

Name:

Phone: Residence:

Age & Birthdate:

Business:

Address:

Present Charge(s):

Previous Convictions:

Plea Entered:

PERSONAL HISTORY

Birthplace:

Ethnic Origin: Father:

Mother:

Religious Affiliation:

Education:

Health:

EMPLOYMENT HISTORY:

MARITAL STATUS:

Spouse's Name:

Maiden Name:

Address:

Age:

Religious Affiliation:

Date & Place of Marriage:

Education:

Employment:

Children:

HOME CONDITIONS:

USE OF LEISURE TIME:

HABITS:

Alcohol:

Tobacco:

Drugs:

FINANCIAL STATUS:

FUTURE PLANS:

FAMILY HISTORY

FATHER:

Name

Address:

Birthplace:

Age:

Health:

Religious Affiliation:

Occupation:

MOTHER:

Name:

Maiden Name:

Address:

Birthplace:

Age:

Health:

Religious Affiliation:

Occupation:

SIBLINGS:

SUMMARY:

EVALUATION:

DISPOSITION:

Date Compiled _____.

Probation Officer.

APPENDIX 3

THE DATA COLLECTION SHEET: TWO EXAMPLE CASES

IDENTIFICATION NUMBER	033
PRESENT CHARGE(S)	Theft over \$50
DEVELOPMENT OF PRESENT CHARGE(S)	
POLICE REPORT arises out of a complaint of a missing 2 yr. old steer, the same one claimed by the subject and subsequently sold. It is stated in the police report that at the time of sale the subject knew it was not his. Animal not branded--worth \$200	
SUBJECT'S REPORT the subject claims that it was a legitimate misunderstanding as he was missing cattle from his herd and found the steer that looked like one of his. He offered to compensate the complainant.	
PREVIOUS CONVICTIONS AND ADJUDICATIONS nil	
REPRESENTED BY COUNSEL	no
PLEA	
OFFENDER CHARACTERISTICS	
PLACE OF BIRTH	Edmonton
AGE--BIRTHDATE	24 yrs. May, 1945
RACIAL ORIGIN	
RELIGION AND ATTENDANCE	Lutheran attends
EDUCATION	Grade 12
HEALTH	Good
PERSONALITY	difficult to determine any element of criminal pathology in his thinking--flat personality--not exceptionally bright
TRADE	Farmer
PREVIOUS EMPLOYMENT	
PRESENT EMPLOYMENT	Self-employed

MARITAL STATUS Wife age 20 1 child--15 mos.

HOME CONDITION resides with wife and family on farm

RECREATION Limited social activities

HABITS:	ALCOHOL	no
	TOBACCO	yes
	DRUGS	no

FINANCIAL STATUS:

ASSETS limited--farm valued at \$50,000, car, machinery
 purchased from father

LIABILITIES none

FAMILY HISTORY

PARENTS from Poland -- father retired

SIBLINGS 2 older brother and sister
(37) (38)

ELIGIBLE FOR OR DRAW nil

SERVICE RECORD nil

FUTURE PLANS continue to operate farm

ADDITIONAL POINTS AND SUMMARY COMMENTS

enjoyed a normal upbringing

RECOMMENDATION	At most he would be accused of poor judgment and lack of discretion--has made restitution. Perhaps a short period of probation would be an adequate conclusion.
----------------	---

ADJUDICATION 6 mos. probation--report to probation officer once a month or as required

IDENTIFICATION NUMBER 011

PRESENT CHARGES(S) Theft over \$50 (2 charges of) Nov. 16 and
Jan. 10

DEVELOPMENT OF PRESENT CHARGE(S)

POLICE REPORT drinking heavily in the company of friend (also
charged)
decided to drive around the city

SUBJECT'S REPORT

PREVIOUS CONVICTIONS AND ADJUDICATIONS

Nov. '68: assault police officer--6 mos. suspended sentence
May '69: vagrancy--time in custody
July '69: assault in Ponoka--6 mos. suspended sentence
Sept. '69: obtained a meal by fraud--\$15 and costs
Oct. '69: assault--\$50
Dec. '69: attempted suicide--6 mos. probation

REPRESENTED BY COUNSEL

PLEA

OFFENDER CHARACTERISTICS

PLACE OF BIRTH Cardston

AGE--BIRTHDATE 18 years June 1951

RACIAL ORIGIN Blackfoot Indian

RELIGION AND ATTENDANCE R.C. occasionally

EDUCATION Grade 11 vocational

HEALTH excellent

PERSONALITY overt, pleasant youth

TRADE student (carpentry)

PREVIOUS EMPLOYMENT part time

PRESENT EMPLOYMENT part time

MARITAL STATUS single

HOME CONDITION presently living with mother--had to quit school
due to drinking problems--progress has been favorable--at one point
had a high average at school of 93%. Was enrolled in 3 courses.
Parents have lived apart for the past 10 years

RECREATION athletics, dancing

HABITS: ALCOHOL an inability to handle--occasional use of
 TOBACCO 1/2 pack per day
 DRUGS no

FINANCIAL STATUS:

ASSETS nil

LIABILITIES nil

FAMILY HISTORY

PARENTS father has a serious alcoholic problem--is a
 laborer; mother is a social worker
SIBLINGS 6: 24 to 4 years: 3 girls, 3 boys

ELIGIBLE FOR OR DRAW nil

SERVICE RECORD nil

FUTURE PLANS to continue education

ADDITIONAL POINTS AND SUMMARY COMMENTS

is attending division of alcohol--AA program

RECOMMENDATION It is felt by this office that a term of incarceration
at Bowden would accomplish a change in
attitude

ADJUDICATION 8 mos. at Fort Sask. Gaol with recommendation that it
be served in Belmont.

B29995